



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RECYCLE MANAGEMENT OF WAYNESBORO, LLC
FOR
RECYCLE MANAGEMENT OF WAYNESBORO, LLC
General VPDES Permit Registration No. VAR052280**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Recycle Management of Waynesboro, LLC, regarding Recycle Management of Waynesboro, LLC, for the purpose of resolving certain violations of the State Water Control Law, the applicable Permit, and the Regulation. This Order supersedes and terminates that Consent Order issued by the Board to Recycle Management of Waynesboro, LLC on June 20, 2018.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" means the Recycle Management of Waynesboro, LLC scrap and waste site located at 715 North Bayard Avenue in Waynesboro, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means General VPDES Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Recycle Management applied for registration under the Permit and was issued coverage under Registration No. VAR052280 on June 8, 2015.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)

contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

13. “Recycle Management” means Recycle Management of Waynesboro, LLC, a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Recycle Management is a “person” within the meaning of Va. Code § 62.1-44.3.
14. “Registration statement” means a registration statement for coverage under a storm water general permit.
15. “Regulation” means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.* effective July 1, 2014.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “TMDL” means Total Maximum Daily Load, and is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.
19. “Va. Code” means the Code of Virginia (1950), as amended.
20. “VAC” means the Virginia Administrative Code.
21. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Recycle Management owns and operates the Facility. The Permit allows Recycle Management to discharge stormwater associated with Industrial Sector M – SIC Code 5015 and Industrial Sector N - SIC Code 5093 activities from the Facility to the South River, in compliance with the terms and conditions of the Permit.
2. South River is located in the Potomac River Basin and is listed in DEQ’s 305(b) report as impaired due to violations of the General Standard for Benthics. The source of pollutants is listed as Municipal – Urbanized High Density Area and this impairment is included in the EPA approved South River benthic TMDL (Federal TMDL ID# 38138 & 38139).
3. DEQ issued a Consent Order to Recycle Management, effective June 20, 2018, for violations of State Water Control Law, Regulations, and the Permit at the Facility. The

Consent Order provided a schedule of compliance (Appendix A) for the implementation of corrective actions at the Facility and the submittal of documentation required by the Permit. Specifically, Item 6 of Appendix A required the quarterly submittal of documentation of all monitoring, evaluation, and recordkeeping requirements included in the Permit, with the first quarterly report submittal due July 10, 2018.

4. On July 11, 2018, a records review of the Facility's discharge monitoring reports (DMRs) indicated that semi-annual benchmark and TMDL discharge monitoring for Outfalls 001 and 002 at the Facility were not performed for the monitoring period of January 1 through June 30, 2018, as required by the Permit. DEQ records indicate that Outfall 003, originally included in the Permit, was removed as a discharge point during the monitoring period, and therefore a DMR was not required for that outfall.
5. Permit Part I.A.1.b(1) requires that: "Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility's discharge."
6. Permit Part I.A.1.c(3) requires that: "Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation at least once during each of the monitoring periods after coverage under the permit begins."
7. Permit Part I.B.7.b. requires that: "Owners of facilities in the Chesapeake Bay watershed shall monitor their discharges for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) to characterize the contributions from their facility's specific industrial sector for these parameters."
8. Va. Code § 62.1-44.31 states in part that: "It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter..."
9. On August 13, 2018, DEQ issued NOV No. W2018-08-V-0002 to Recycle Management for failure to comply with the requirements of the Permit and for failure to comply with the Consent Order.
10. Based on the results of the records review by DEQ, the Board concludes that Recycle Management has violated Permit Part I.A.1.b(1), Permit Part I.A.1.c(3), Permit Part I.B.7.b. and Va. Code § 62.1-44.31 as noted in paragraphs C(4) through C(9) described above.
11. In order for Recycle Management to return to compliance, DEQ staff and Recycle Management have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Recycle Management, and Recycle Management agrees to the items listed below. Both the Board and Recycle Management understand and agree that this Order supersedes and terminates the Consent Order issued to Recycle Management on June 20, 2018.

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,380.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of the effective date of the Order	\$1,345.00 or balance
October 10, 2019	\$1,345.00 or balance
January 10, 2020	\$1,345.00 or balance
April 10, 2020	\$1,345.00 or balance

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Recycle Management shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Recycle Management shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Recycle Management for good cause shown by Recycle Management, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-08-V-0002, dated August 13, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent,

- or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Recycle Management admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
 4. Recycle Management consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
 5. Recycle Management declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
 6. Failure by Recycle Management to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. Recycle Management shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Recycle Management shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Recycle Management shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

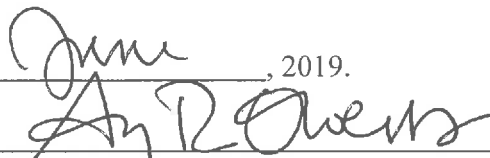
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Recycle Management. Nevertheless, Recycle Management agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after Recycle Management has completed all of the requirements of the Order;
 - b. Recycle Management petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Recycle Management.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Recycle Management from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Recycle Management and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Recycle Management certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Recycle Management to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Recycle Management.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Recycle Management voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of June, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

Recycle Management of Waynesboro, LLC voluntarily agrees to the issuance of this Order.

Date: 04/18/19 By: [Signature], SOLE MEMBER
Jody Salyards Title
Recycle Management of Waynesboro, LLC

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 18 day of April, 2019, by JODY SALLYARDS who is SOLE MEMBER of Recycle Management of Waynesboro, LLC, on behalf of the company.

[Signature]
Notary Public
108395

Registration No.

My commission expires: 6-30-19

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Chesapeake Bay TMDL Wasteload Allocation

Within 6 months of the effective date of this Order, Recycle Management shall submit loading calculations based on the analysis of nutrient and sediment data captured from at least two sampling events from the Facility. The sampling events must be conducted in accordance with Part I.A.2 of the Permit and the analysis must be conducted in accordance with the Errata Sheet, which is incorporated as Appendix B of this order.

If the calculated loading values from the Facility exceed the loading values presented in Part I.B.7.b.(3)(a) of the Permit, Recycle Management must also submit within 6 months of the effective date of this Order a Chesapeake Bay TMDL Action Plan in accordance with Part I.B.7.b.(3)(c) of the Permit.

2. Reporting

For 12 months following the effective date of this Order, Recycle Management shall submit quarterly reports to DEQ that include documentation of all monitoring, evaluation, and recordkeeping requirements included in the Permit. The first report is due **April 10, 2019**, and subsequent reports will be due by **July 10, October 10, and January 10** until the cancellation of this Order. Reports must include but are not limited to:

- a. Copies of documentation demonstrating that salvage vehicles are inspected upon arrival at the Facility for leaks and that vehicles are properly drained of fluids prior to being dismantled or crushed;
- b. A copy of documentation of routine facility inspection for the quarter to include inspection of any equipment containing oily parts, hydraulic fluids, any other types of fluids, and mercury switches. The report shall show the location(s) of hazardous material storage and the location of fluid storage.
- c. Copies of visual monitoring reports for each outfall.

3. DEQ Contact

Unless otherwise specified in this Order, Recycle Management shall submit all requirements of Appendix A of this Order to:

Tamara Ambler
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
540-574-7878 (FAX)
tamara.ambler@deq.virginia.gov